

balance of the certified mortgage indebtedness specified on the existing certificate, a maturity equal to that of the refinanced loan, and interest equal to the annual percentage rate (APR) of the refinancing loan that is required to be calculated for the Federal Truth in Lending Act.

(E) A holder must consistently apply the scheduled interest method or the hypothetical interest method for all taxable years beginning with the first taxable year the tax credit is claimed by the holder based upon the reissued certificate.

(4) *Examples.* The following examples illustrate the application of paragraph (p)(3)(v) of this section:

Example 1. A holder of an existing certificate that meets the requirements of this section seeks to refinance the mortgage on the property to which the existing certificate relates. The final payment on the holder's existing mortgage is due on December 31, 2000; the final payment on the new mortgage would not be due until January 31, 2004. The holder requests that the issuer provide to the holder a reissued mortgage credit certificate in place of the existing certificate. The requested certificate would have the same certificate credit rate as the existing certificate. For each calendar year through the year 2000, the credit that would be allowable to the holder with respect to the new mortgage under the requested certificate would not exceed the credit allowable for that year under the existing certificate. The requested certificate, however, would allow the holder credits for the years 2001 through 2004, years for which, due to the earlier scheduled retirement of the existing mortgage, no credit would be allowable under the existing certificate. Under paragraph (p)(3)(v) of this section, the issuer may not reissue the certificate as requested because, under the existing certificate, no credit would be allowable for the years 2001 through 2004. The issuer may, however, provide a reissued certificate that limits the amount of the credit allowable in each year to the amount allowable under the existing certificate. Because the existing certificate would allow no credit after December 31, 2000, the reissued certificate could expire on December 31, 2000.

Example 2. (a) The facts are the same as *Example 1* except that the existing mortgage loan has a variable rate of interest and the refinancing loan will have a fixed rate of interest. To determine whether the limit under paragraph (p)(3)(v) of this section is met for any taxable year, the holder must calculate the amount of credit that otherwise would have been allowable absent the refinancing. This requires a determination of the amount

of interest that would have been payable on the refinanced loan for the taxable year. The holder may determine this amount by—

(1) Applying the terms of the refinanced loan, including the variable interest rate or rates, for the taxable year as though the refinanced loan continued to exist; or

(2) Obtaining the amount of interest, and calculating the amount of credit that would have been available, from the schedule of equal payments that fully amortize a hypothetical loan with the principal amount equal to the remaining outstanding balance of the certified mortgage indebtedness specified on the existing certificate, the interest equal to the annual percentage rate (APR) of the refinancing loan, and the maturity equal to that of the refinanced loan.

(b) The holder must apply the same method for each taxable year the tax credit is claimed based upon the reissued mortgage credit certificate.

(5) *Coordination with Section 143(m)(3).* A refinancing loan underlying a reissued mortgage credit certificate that replaces a mortgage credit certificate issued on or before December 31, 1990, is not a federally subsidized indebtedness for the purposes of section 143(m)(3) of the Internal Revenue Code.

[T.D. 8692, 61 FR 66214, Dec. 17, 1996]

§ 1.25-3T Qualified mortgage credit certificate (Temporary).

(a) *Definition of qualified mortgage credit certificate.* For purposes of §§ 1.25-1T through 1.25-8T, the term “qualified mortgage credit certificate” means a certificate that meets all of the requirements of this section.

(b) *Qualified mortgage credit certificate program.* A certificate meets the requirements of this paragraph if it is issued under a qualified mortgage credit certificate program (as defined in § 1.25-4T).

(c) *Required form and information.* A certificate meets the requirements of this paragraph if it is in the form specified in § 1.25-6T and if all the information required by the form is specified on the form.

(d) *Residence requirement—(1) In general.* A certificate meets the requirements of this paragraph only if it is provided in connection with the acquisition, qualified rehabilitation, or qualified home improvement of a residence, that is—

(i) A single-family residence (as defined in § 1.25-1T(b)(5)) which, at the

time the financing on the residence is executed or assumed, can reasonably be expected by the issuer to become (or, in the case of a qualified home improvement loan, to continue to be) the principal residence (as defined in section 1034 and the regulations thereunder) of the holder of the certificate within a reasonable time after the financing is executed or assumed, and

(ii) Located within the jurisdiction of the governmental unit issuing the certificate.

See section 1034(d) and the regulations thereunder for further definitions and requirements.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating his intent to use (or, in the case of a qualified home improvement loan, that he is currently using and intends to continue to use) the residence as his principal residence within a reasonable time (*e.g.*, 60 days) after the mortgage credit certificate is issued and stating that the holder will notify the issuer of the mortgage credit certificate if the residence ceases to be his principal residence. The affidavit must also state facts that are sufficient for the issuer or his agent to determine whether the residence is located within the jurisdiction of the issuer that issued the mortgage credit certificate.

(e) *3-year requirement*—(1) *In general.* A certificate meets the requirements of this paragraph only if the holder of the certificate had no present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the mortgage on the residence in connection with which the certificate is provided is executed. For purposes of the preceding sentence, the holder's interest in the residence with respect to which the certificate is being provided shall not be taken into account. See section 1034(e) and the regulations thereunder for further definitions and requirements.

(2) *Exceptions.* Paragraph (e)(1) shall not apply with respect to—

(i) Any certificate provided with respect to a targeted area residence (as defined in § 1.25-1T(b)(7)),

(ii) Any qualified home improvement loan (as defined in § 1.25-1T(b)(3)), and

(iii) Any qualified rehabilitation loan (as defined in § 1.25-1T(b)(4)).

(3) *Certification procedure.* The requirements of paragraph (e)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that he had no present ownership interest in a principal residence at any time during the 3-year period prior to the date of which the certificate is issued and the issuer or its agent obtains from the applicant copies of the applicant's Federal tax returns for the preceding 3 years and examines each statement to determine whether the applicant has claimed a deduction for taxes on property which was the applicant's principal residence pursuant to section 164(a)(1) or a deduction pursuant to section 163 for interest paid on a mortgage secured by property which was the applicant's principal residence. Where the mortgage is executed during the period between January 1 and February 15 and the applicant has not yet filed his Federal income tax return with the Internal Revenue Service, the issuer may, with respect to such year, rely on an affidavit of the applicant that the applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his principal residence for the preceding calendar year. In the alternative, when applicable, the holder may provide an affidavit stating that one of the exceptions provided in paragraph (e)(2) applies.

(4) *Special rule.* An issuer may submit a plan to the Commissioner for distributing certificates, in an amount not to exceed 10 percent of the proceeds of the issue, to individuals who do not meet the requirements of this paragraph. Such plan must describe a procedure for ensuring that no more than 10 percent of the proceeds of a such issue will be used to provide certificates to such individuals. If the Commissioner approves the issuer's plan, certificates issued in accordance with the terms of the plan to holders who do not meet the 3-year requirement do not fail to satisfy the requirements of this paragraph.

(f) *Purchase price requirement*—(1) *In general.* A certificate meets the requirements of this paragraph only if the acquisition cost (as defined in § 1.25-1T(b)(8)) of the residence, other than a targeted area residence, in connection with which the certificate is provided does not exceed 110 percent of the average area purchase price (as defined in § 1.25-1T(b)(9)) applicable to that residence. In the case of a targeted area residence (as defined in § 1.251T(b)(7)) the acquisition cost may not exceed 120 percent of the average area purchase price applicable to such residence. See section 1093A(f) and the regulations thereunder for further definitions and requirements.

(2) *Certification procedure.* The requirements of paragraph (f)(1) will be met if the issuer or its agent obtains affidavits executed by the seller and the buyer that state these requirements have been met. Such affidavits must include an itemized list of—

(i) Any payments made by the buyer (or a related person) or for the benefit of the buyer,

(ii) If the residence is incomplete, an estimate of the reasonable cost of completing the residence, and

(iii) If the residence is purchased subject to a ground rent, the capitalized value of the ground rent.

The issuer or his agent must examine such affidavits and determine whether, on the basis of information contained therein, the purchase price requirement is met.

(g) *New mortgage requirement*—(1) *In general.* (i) A certificate meets the requirements of this paragraph only if the certificate is not issued in connection with the acquisition or replacement of an existing mortgage. Except in the case of a qualified home improvement loan, the certificate must be issued to an individual who did not have a mortgage (whether or not paid off) on the residence with respect to which the certificate is issued at any time prior to the execution of the mortgage.

(ii) *Exceptions.* For purposes of this paragraph, a certificate used in connection with the replacement of—

(A) Construction period loans,

(B) Bridge loans or similar temporary initial financing, and

(C) In the case of a qualified rehabilitation loan, an existing mortgage,

shall not be treated as being used to acquire or replace an existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less. See section 103A(j)(1) and the regulations thereunder for examples illustrating the application of these requirements.

(2) *Certification procedure.* The requirements of paragraph (g)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that the mortgage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage (other than one that falls within the exceptions described in paragraph (g)(1)(ii)).

(h) *Transfer of mortgage credit certificates*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is (i) not transferable or (ii) transferable only with the approval of the issuer.

(2) *Transfer procedure.* A certificate that is transferred with the approval of the issuer is a qualified mortgage credit certificate in the hands of the transferee only if each of the following requirements is met:

(i) The transferee assumed liability for the remaining balance of the certified indebtedness amount in connection with the acquisition of the residence from the transferor,

(ii) The issuer issues a new certificate to the transferee, and

(iii) The new certificate meets each of the requirements of paragraphs (d), (e), (f), and (i) of this section based on the facts as they exist at the time of the transfer as if the mortgage credit certificate were being issued for the first time. For example, the purchase price requirement is to be determined by reference to the average area purchase price at the time of the assumption and not when the mortgage credit certificate was originally issued.

(3) *Statement on certificate.* The requirements of paragraph (h)(1) will be met if the mortgage credit certificate states that the certificate may not be transferred or states that the certificate may not be transferred unless the issuer issues a new certificate in place of the original certificate.

(i) *Prohibited mortgages*—(1) *In general.* A certificate meets the requirements of this paragraph only if it is issued in connection with the acquisition of a residence none of the financing of which is provided from the proceeds of—

(i) A qualified mortgage bond (as defined under section 103A(c)(1) and the regulations thereunder), or

(ii) A qualified veterans' mortgage bond (as defined under section 103A(c)(3) and the regulations thereunder).

Thus, for example, if a mortgagor has a mortgage on his principal residence that was obtained from the proceeds of a qualified mortgage bond, a mortgage credit certificate issued to such mortgagor in connection with a qualified home improvement loan with respect to such residence is not a qualified mortgage credit certificate. If, however, the financing provided from the proceeds of the qualified mortgage bond had been paid off in full, the certificate would be a qualified mortgage credit certificate (assuming all the requirements of this paragraph are met).

(2) *Certification procedure.* The requirements of paragraph (i)(1) will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that no portion of the financing of the residence in connection with which the certificate is issued is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond.

(j) *Particular lenders*—(1) *In general.* Except as otherwise provided in paragraph (j)(2), a certificate meets the requirements of this paragraph only if the certificate is not limited to indebtedness incurred from particular lenders. A certificate is limited to indebtedness from particular lenders if the issuer, directly or indirectly, prohibits the holder of a certificate from obtaining financing from one or more lenders or requires the holder of a certificate to obtain financing from one or more lenders. For purposes of this paragraph, a lender is any person, including an issuer of mortgage credit certificates, that provides financing for the acquisition, qualified rehabilitation, or qualified home improvement of a residence.

(2) *Exception.* A mortgage credit certificate that is limited to indebtedness incurred from particular lenders will not cease to meet the requirements of this paragraph if the Commissioner approves the basis for such limitation. The Commissioner may approve the basis for such limitation if the issuer establishes to the satisfaction of the Commissioner that it will result in a significant economic benefit to the holders of mortgage credit certificates (*e.g.*, substantially lower financing costs) compared to the result without such limitation.

(3) *Taxable bonds.* The requirements of this paragraph do not prevent an issuer of mortgage credit certificates from issuing mortgage subsidy bonds (other than obligations described in section 103 (a)) the proceeds of which are to be used to provide mortgages to holders of mortgage credit certificates provided that the holders of such certificates are not required to obtain financing from the proceeds of the bond issue. See §1.25-4T (h) with respect to permissible fees.

(4) *Lists of participating lenders.* The requirements of this paragraph do not prohibit an issuer from maintaining a list of lenders that have stated that they will make loans to qualified holders of mortgage credit certificates, provided that (i) the issuer solicits such statements in a public notice similar to the notice described in §1.25-7T, (ii) lenders are provided a reasonable period of time in which to express their interest in being included in such a list, and (iii) holders of mortgage credit certificates are not required to obtain financing from the lenders on the list. If an issuer maintains such a list, it must update the list at least annually.

(5) *Certification procedure.* The requirements of this paragraph will be met if (i) the issuer or its agent obtains from the holder of the certificate an affidavit stating that the certificate was not limited to indebtedness incurred from particular lenders or (ii) the issuer obtains a ruling from the Commissioner under paragraph (j)(2).

(6) *Examples.* The following examples illustrate the application of this paragraph:

Example 1. Under its mortgage credit certificate program, County Z distributes all the certificates to be issued to a group of 60 participating lenders. Residents of County Z may obtain mortgage credit certificates only from the participating lenders and only in connection with the acquisition of mortgage financing from that lender or one of the other participating lenders. Certificates issued under this program do not meet the requirements of this paragraph since the certificates are limited to indebtedness incurred from particular lenders. The certificates, therefore, are not qualified mortgage credit certificates.

Example 2. In connection with its mortgage credit certificate program, County Y arranges with Bank P for a line of credit to be used to provide mortgage financing to holders of mortgage credit certificates. County Y, pursuant to paragraph (j)(4), maintains a list of lenders participating in the mortgage credit certificate program. County Y distributes the certificates directly to applicants. Holders of the certificates are not required to obtain mortgage financing through the line of credit or through a lender on the list of participating lenders. Certificates issued pursuant to County Y's program satisfy the requirements of this paragraph.

(k) *Developer certification*—(1) *In general.* A mortgage credit certificate that is allocated by the issuer to any particular development meets the requirements of this paragraph only if the developer provides a certification to the purchaser of the residence and the issuer stating that the purchase price of that residence is not higher than the price would be if the issuer had not allocated mortgage credit certificates to the development. The certification must be made by the developer if a natural person or, if not, by a duly authorized official of the developer.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that he has received from the developer the certification described in this paragraph.

(l) *Expiration*—(1) *In general.* A certificate meets the requirements of this paragraph if the certified indebtedness amount is incurred prior to the close of the second calendar year following the calendar year for which the issuer elected not to issue qualified mortgage bonds under § 1.25-4T with respect to that issue of mortgage credit certificates. Thus, for example, if on October

1, 1984, an issuing authority elects under § 1.25-4T not to issue qualified mortgage bonds, a mortgage credit certificate provided under that program does not meet the requirements of this paragraph unless the indebtedness is incurred on or before December 31, 1986.

(2) *Issuer-imposed expiration dates.* An issuer of mortgage credit certificates may provide that a certificate shall expire if the holder of the certificate does not incur certified indebtedness by a date that is prior to the expiration date provided in paragraph (l)(1). A certificate that expires prior to the date provided in paragraph (l)(1) may be re-issued provided that the requirements of this paragraph are met.

(m) *Revocation.* A certificate meets the requirements of this paragraph only if it has not been revoked. Thus, the credit provided by section 25 and § 1.25-1T does not apply to interest paid or accrued following the revocation of a certificate. A certificate is treated as revoked when the residence to which the certificate relates ceases to be the holder's principal residence. An issuer may revoke a mortgage credit certificate if the certificate does not meet all the requirements of § 1.25-3T (d), (e), (f), (g), (h), (i), (j), (k), and (n). The certificate is revoked by the issuer's notifying the holder of the certificate and the Internal Revenue Service that the certificate is revoked. The notice to the Internal Revenue Service shall be made as part of the report required by § 1.25-8T (b)(2).

(n) *Interest paid to related person*—(1) *In general.* A certificate does not meet the requirements of this paragraph if interest on the certified indebtedness amount is paid to a person who is a related person to the holder of the certificate.

(2) *Certification procedure.* The requirements of this paragraph will be met if the issuer or its agent obtains from the holder of the certificate an affidavit stating that a related person does not have, and is not expected to have, an interest as a creditor in the certified indebtedness amount.

(o) *Fraud.* Notwithstanding any other provision of this section, a mortgage credit certificate does not meet the requirements of this section and, therefore, the certificate is not a qualified

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mortgage credit certificate for any calendar year, if the holder of the certificate provides a certification or any other information to the lender providing the mortgage or to the issuer of the certificate containing a material misstatement and such misstatement is due to fraud. In determining whether any misstatement is due to fraud, the rules generally applicable to underpayments of tax due to fraud (including rules relating to the statute of limitations) shall apply. See § 1.6709-1T with respect to the penalty for filing negligent or fraudulent statements.

[T.D. 8023, 50 FR 19348, May 8, 1985, as amended at T.D. 8502, 58 FR 67689, Dec. 22, 1993; T.D. 8692, 61 FR 66215, Dec. 17, 1996]

§ 1.25-4T Qualified mortgage credit certificate program (Temporary).

(a) *In general*—(1) *Definition of qualified mortgage credit certificate program.* For purposes of §§ 1.25-1T through 1.25-8T, the term “qualified mortgage credit certificate program” means a program to issue qualified mortgage credit certificates which meets all of the requirements of paragraphs (b) through (i) of this section.

(2) *Requirements are a minimum.* Except as otherwise provided in this section, the requirements of this section are minimum requirements. Issuers may establish more stringent criteria for participation in a qualified mortgage credit certificate program. Thus, for example, an issuer may target 30 percent of the proceeds of an issue of mortgage credit certificates to targeted areas. Further, issuers may establish additional eligibility criteria for participation in a qualified mortgage credit certificate program. Thus, for example, issuers may impose an income limitation designed to ensure that only those individuals who could not otherwise purchase a residence will benefit from the credit.

(3) Except as otherwise provided in this section and § 1.25-3T, issuers may use mortgage credit certificates in connection with other Federal, State, and local programs provided that such use complies with the requirements of § 1.25-3T(j). Thus, for example, a mortgage credit certificate may be issued in connection with the qualified rehabilitation of a residence part of the cost of

which will be paid from the proceeds of a State grant.

(b) *Establishment of program.* A program meets the requirements of this paragraph only if it is established by a State or political subdivision thereof for any calendar year for which it has the authority to issue qualified mortgage bonds.

(c) *Election not to issue qualified mortgage bonds*—(1) *In general.* A program meets the requirements of this paragraph only if the issuer elects, in the time and manner specified in this paragraph, not to issue an amount of qualified mortgage bonds that it may otherwise issue during the calendar year under section 103A and the regulations thereunder.

(2) *Manner of making election.* On or before the earlier of the date of distribution of mortgage credit certificates under a program or December 31, 1987, the issuer must file an election not to issue an amount of qualified mortgage bonds. The election (and the certification (or affidavit) described in paragraph (d)) shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The election should be titled “Mortgage Credit Certificate Election” and must include—

(i) The name, address, and TIN of the issuer,

(ii) The issuer’s applicable limit, as defined in section 103A (g) and the regulations thereunder,

(iii) The aggregate amount of qualified mortgage bonds issued by the issuing authority during the calendar year,

(iv) The amount of the issuer’s applicable limit that it has surrendered to other issuers during the calendar year,

(v) The date and amount of any previous elections under this paragraph for the calendar year, and

(vi) The amount of qualified mortgage bonds that the issuer elects not to issue.

(3) *Revocation of election.* Any election made under this paragraph may be revoked, in whole or in part, at any time during the calendar year in which the election was made. The revocation, however, may not be made with respect to any part of the nonissued bond amount that has been used to issue